IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2771 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMC BIN SAFAI STAFF COOP. CREDIT & SUPPLY

Versus

MOHMED AFZAL IBRAHIM SHAIKH

Appearance:

1. Special Civil Application No. 2771 of 1995

MR MB GANDHI for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 20/02/2004

ORAL JUDGEMENT

Heard learned advocate Mr.Gadhi for the petitioner. The respondent MOHMED AFZAL IBRAHIM SHAIKH

has personally remained present before this Court. He was identified by the learned advocate Mr.M.B.Gandhi. In this petition,the petitioner is challenging the award of the labour court in Reference NO. 2479 of 1992 dated 3rd January, 1995 wherein the labour court concerned has set aside the order of termination and has also granted the reinstatement with continuity of service with 25 per cent of the back wages for the intervening period.

Today, when the matter was taken up for final hearing, learned advocate Mr.Gandhi for the petitioner has submitted that after the award was made by the labour court, the petitioner has reinstated the respondent in service and at present,the respondent is in service of the petitioner and now the question is only about the payment of 25 per cent of the back wages for the intervening period as directed by the labour court. He further submits that the respondent Shri MOHMED AFZAL IBRAHIM SHAIKH who is personally present before this Court is prepared to forego his claim for that part of the award namely 25 per cent of the back wages for the intervening period and, therefore, award in question made by the labour court is required to be modified to that extent.

Considering the statement made by the learned advocate Mr.Gandhi, the court has asked the question to the respondent as to what is his name and whether he is voluntarily foregoing 25 per cent of the back wages for the intervening period or not. He submitted before this Court that he has been assured by the petitioner about continuity of service and, therefore, he is foregoing the back wages to the extent of 25 per cent as directed by the labour court for the intervening period. He also submits that there is no coercion or force against him by the petitioner for foregoing the said back wages.

Therefore, considering the statement made by the learned advocate Mr.Gandhi and the respondent Shri MOHMED AFZAL IBRAHIM SHAIKH as identified by the learned advocate Mr.Gandhi, the award in question is required to be modified to that extent.

Accordingly, the award in question dated 3.1.1995 passed by the labour court concerned in Reference No. 2479 of 1992 is hereby modified to the effect that now the workman respondent Shri MOHMED AFZAL IBRAHIM SHAIKH is entitled only for the reinstatement with continuity of service without any back wages for the intervening period. This petition is partly allowed. Rule is made absolute accordingly. Registry is directed to refund the

amount of Rs.16,800.00 of 25 per cent of the back wages deposited by the petitioner to the petitioner by account payee cheque drawn in the name of the petitioner AMC BIN SAFAI STAFF COOP. CREDIT & SUPPLY. It is directed and clarified that the workman is entitled for continuity of service means the continuity of service as if he has not been dismissed or terminated from service. Rule is made absolute accordingly. Interim relief, if any, shall stand vacated. There shall be no order as to costs.

(H.K. Rathod,J.)

Vyas